

No. 83-821

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In The
Supreme Court of the United States
October Term, 1983

WHITE HYDRAULICS, INC., HARVEY C. WHITE,
and HOLLIS N. WHITE, JR.,

Petitioners,

vs.

SAUER-GETRIEBE, KG,

Respondent.

On Certiorari to the United States Court of Appeals
For the Seventh Circuit

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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**COUNTER-STATEMENT OF THE QUESTIONS
PRESENTED**

Whether a commercial contract which provides for arbitration before the Court of Arbitration of the International Chamber of Commerce is valid.

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Counterstatement of the Case.....	2
Reasons for Denying the Writ	4
Summary of Argument	4
This Court has already determined that an arbitration clause in a commercial contract providing for arbitration before the International Chamber of Commerce.	4
Conclusion	5

TABLE OF AUTHORITIES

CASES:

Scherk v. Alberto-Culver Company, 417 U. S. 520, 94 S. Ct. 2449, 41 L. Ed. 2d 270 (1974)	4
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STATUTE:

U. S. C. 1254 (1)	2
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RULE:

Rule 17 of the Rules of U. S. Supreme Court	4
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OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Indiana which is not recorded is found in the appendix filed by Petitioners at pages A-10 through A-19. The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 715 Fed. 348.

JURISDICTION

Jurisdiction is sought to be invoked pursuant to the provisions of U. S. C. 1254(1).

COUNTERSTATEMENT OF THE CASE

On June 29, 1979, the Respondent Sauer-Getriebe, KG, (hereinafter Sauer) and the Petitioners White Hydraulics, Inc., (hereinafter White) entered into a written agreement which White agreed to sell to Sauer hydraulic motors manufactured by White. The Agreement provided that Sauer had the exclusive right to sell hydraulic motors at a designated international sales territory and that White would receive a royalty from Sauer for each sale.

On or about January of 1980 negotiations were instituted between Sauer and White for the purchase by Sauer of all of the assets and/or stock of White. These negotiations continued through June of 1981 and were unsuccessfully concluded in July of 1981.

In July of 1981, White advised Sauer of negotiations by White with a third party for the sale of its assets and/or stock. Sauer then requested confirmation from White that it would take no action prejudicial to Sauer's rights with respect to the trade secrets. White failed to give Sauer such assurances and this action was filed on August 14, 1981 seeking an injunction to prevent White from transferring the trade secrets and manufacturing rights to a third party pending resolution of Sauer's right to said

manufacturing rights and trade secrets in an arbitration proceeding to be filed before the International Chamber of Commerce.

On December 18, 1981 Sauer filed a demand for arbitration with the International Chamber of Commerce seeking an Order directing White to transfer the manufacturing trade secrets to Sauer.

The Agreement between White and Sauer contains an arbitration clause which provides in pertinent part that "any and all disputes arising out of and in connection with this agreement shall be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. . . ." Said rules of Conciliation provide in pertinent part that "the party shall be at liberty to apply to any competent judicial authority for interim or conservatory measures and they shall not by so doing be held to infringe the agreement to arbitrate or effect the relevant powers reserved to the arbitrator".

The matter was tried before the Honorable Allen B. Sharp, the United States District Court for the Northern District of Indiana without a jury on March 11 and March 12. Judge Sharp entered findings of fact and conclusions of law on March 31, 1982 and the Clerk entered judgment on the Court's findings on April 1, 1982.

Cross appeals were taken to the United States Court of Appeals for the Seventh Circuit which entered its opinion on Order affirming in part, and vacating and remanding in part with directions the judgment of the District Court.

REASONS FOR DENYING THE WRIT

Summary of Argument

None of the reasons for granting a Writ of Certiorari at least as set forth in Rule 17 of the Rules of Supreme Court of the United States is applicable to this case. No conflict has been cited among the decisions of the Court of Appeals which addressed any of the issues in this case. The decision of the Seventh Circuit does not conflict with any decisions of this Court. Nor has there been any departure from the accepted and usual course of judicial proceedings.

This Court Has Already Determined That An Arbitration Clause In A Commercial Contract Providing For Arbitration Before The International Chamber of Commerce Is Valid.

The United States Supreme Court has interpreted a contract clause identical to the one at issue which called for arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce concerning any disputes arising under the contract. In *Scherk v. Alberto-Culver Company*, 417 U. S. 520, 94 S. Ct. 2449, 41 L. Ed. 2d 270 (1974), the Court spoke as follows:

"An agreement to arbitrate before a specified tribunal is, in effect, a specialized kind of forum selection clause that posits not only the situs of the suit but also the procedure to be used in resolving the dispute. The invalidation of such an agreement in the case before us would not only allow the respondent to repudiate its solemn promise but would, as well, reflect a parochial concept that all disputes must be resolved under our laws and in our courts.

"For all these reasons we hold that the Agreement of the parties in this case to arbitrate any dispute arising out of their international commercial transaction is to be respected and enforced by federal courts in accordance with the explicit provisions of the arbitration act." (Emphasis omitted.) 417 U. S. at 519, 520.

Accordingly, it is the position of Sauer that there is no reason to grant a Writ of Certiorari in this case.

CONCLUSION

For the foregoing reasons, Respondent, Sauer-Getriebe, KG respectfully suggests that Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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